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Freedom or Slavery

On Nozick

EDWARD FESER
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Almost all academics, unless libertarians themselves, associate libertarianism with one person: the philosopher Robert Nozick. What better way, then, to arouse interest among students of ethics and political thought in this way of thinking, than to provide a forceful defense of Nozick's brand of libertarianism? Edward Feser uses his considerable abilities of exposition and argument to accomplish exactly this task.

Feser emphasizes a vital fact, which plays a key role in the thought not only of Nozick but also of Murray Rothbard. Once one considers the matter, it seems obvious that each person owns his or her own body: to deny self-ownership is to justify slavery. "It is almost universally acknowledged nowadays that slavery is a very great evil. But *why* is it, exactly? It cannot be for the reason that slaves are often treated

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Also in this Issue:

- *Just War Against Terror: The Burden of American Power in a Violent World* (Jean Bethke Elshtain) 6
- *Epistemological Problems of Economics* (Ludwig von Mises) 11
- *Justice, Luck, and Knowledge* (S.L. Hurley) 15
- *The Case Against the Democratic State: An Essay in Cultural Criticism* (Gordon Graham) 20
- *Why We Fight: Moral Clarity and the War on Terrorism* (William J. Bennett) 24

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badly. For slaves are sometimes treated very well by their masters . . . yet surely, it is *still* seriously wrong for even a 'kindhearted' master to keep a slave. The only way to explain why this is so is that in making someone a slave, a slave owner simply violates the slave's property rights in himself. No one *else* can properly own you, because you already own yourself" (p. 33).

Feser has conveyed the force of self-ownership very well; and as we shall soon see, the principle leads to radical results. But at one point I think that our author has not correctly stated Nozick's view. As he rightly says, some libertarian philosophers have not been satisfied with an appeal to the intuitive force of self-ownership. They seek to imbed this basic libertarian principle within a larger philosophical framework, often of an Aristotelian sort.

For Feser, these attempts are fully Nozickian in spirit, although he readily acknowledges that Nozick did not himself pursue this path. "Though Nozick himself does not give a specifically Aristotelian defense of his position, there are aspects of his work that suggest that such a defense harmonizes well with it" (p. 50). Feser points in support to the fact that Nozick thinks that an individual cannot lead a flourishing life unless others respect his rights.

True enough, but it does not follow from the fact that others must respect your rights, if you are to flourish, that you have an obligation to respect their rights. You may well have such an obligation, but more than an appeal to the conditions of your own flourishing is needed to show this. So, at any rate, Nozick maintained; and in his article "On the Randian Argument" he rejected the Aristotelian defense, not just "the specifically Randian approach to defending natural rights" (p. 50). (The discussion of "ethical pull" and "ethical push" in his *Philosophical Explanations* is of great relevance here.) I venture to suggest that Feser has been misled by his own sympathy for the Aristotelian position. His sympathy is well placed, but the view is not Nozick's.

But philosophical niceties must not distract us. Once given self-ownership, robust rights of property soon follow. If you own yourself, do you not have the right to acquire unowned property by mixing your labor with it? "Until someone does something with a resource . . . it seems obvious that there can be no question of anyone, either collectively or privately, owning it. There lies the intuitive plausibility of the Lockean theory that property results from someone 'mixing his

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labor' with an unowned resource. Ownership of any sort can only get going when someone makes it happen, by doing something with a resource, with what is otherwise just an inert bit of stuff" (p. 82, emphasis removed).

The argument just presented did not gain Nozick's full approval. He thought that initial acquisition of property needed to meet a stricter requirement, the so-called Lockean proviso. Under its terms, acquiring property must make no one worse off. As Feser notes, this requirement is readily met: "But given the practical benefits of the institution of private property . . . people's situation is in general *vastly better* as a result of some people's initially acquiring natural resources" (pp. 83–84).

Because the proviso imposes so weak a demand, it in effect drops out of the picture, and Nozick's theory reduces to a straightforward Rothbardian one. Feser seems entirely right in his contention that the proviso imposes no serious limits to acquisition, but at one point he goes too far. He agrees with the contention of David Schmidtz that the "Lockean proviso thus not only allows for the acquisition of unowned resources; in many cases it actually *requires* it!" (p. 84).

Schmidtz and Feser note, with entire correctness, that people are often worse off if a resource in common use remains unowned. In such a circumstance, no one has an incentive to use the resource efficiently. But the proviso does not, owing to the "tragedy of the commons," require that people remove land from the commons for their own more efficient use. It limits property acquisition: it is not a general principle of benevolence.

Feser suggests that the proviso be dropped altogether. If someone has acquired unowned land, what rights of others does he violate? By hypothesis, the land is unowned; how then can anyone claim that the appropriator has acted unjustly toward him? If it is said in reply that the appropriator has by his act interfered with a prior practice of common use of the land he now secures for himself, Feser stands ready with a rejoinder. "For if B, C, D, and E were already using the . . . [resource] in common, it seems to me that we should say that they had together already appropriated it themselves, in which case A would not be initially appropriating it, but stealing it. Many cases of resources existing 'in the commons' are, I [Feser] would argue, mischaracterized; they are in fact cases

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where appropriation has taken place, just not by a single individual" (p. 87, emphasis removed).

Here our author seems to me entirely on the right, that is to say Rothbardian, lines. But I wonder whether his account of the principle of initial acquisition is entirely satisfactory. "It is, in short," he tells us, "the tendency of labor mixing *significantly* to alter a resource or bring it under one's control that turns it into property" (p. 83). Shall we say, then, that someone who ruins unowned land by that act acquires it? Can one say, e.g., to someone who seeks to homestead land, "You can't build here. I started a forest fire in this neighborhood last year"?

Feser, with characteristic insight, has adopted another Rothbardian doctrine: all rights are *property rights*. Like Rothbard, he asks: to what does the right of free speech amount, beyond the right to use certain physical resources? But from the fact that this analysis of rights is a good idea, and the further fact that Nozick had many good ideas, it does not follow that Nozick adopted it. I am at a loss to understand why Feser says, "on Nozick's conception, all rights turn out to be nothing other than property rights" (p. 36). Nozick countenances, although he never fully commits himself to, procedural rights—rights not to be subject to risky decision procedures. It is not at once evident how these can be accommodated within the analysis that our author favors.[1]

If at times, as it seems to me, Feser elides the differences between Nozick and Rothbard, this by no means indicates his own full adherence to the Rothbardian camp. Quite the contrary, he accepts Nozick's view that a system of competing protection agencies, of the sort that Rothbard favored, would develop by steps that violated no one's rights into a minimal state.

Feser, with characteristic insight, has adopted another Rothbardian doctrine: all rights are property rights.

Suppose that Nozick is right. It by no means follows that a minimal state is preferable to a system of Rothbardian anarchy. One can readily imagine cases in which people end up in very bad conditions, as a result of steps that

[1]Feser argues effectively that procedural rights are negative rights to respect persons' rights to self-ownership (p. 60). But this does not make them property rights. Nozick in conversation rejected the "all rights are property rights" view; he also did not think that all rights stem from self-ownership.

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violate no rights. Imagine that all readers of the *Mises Review* transferred all their assets to me. Though I think this an idea of outstanding merit, honesty compels me to admit it would make my readers far worse off than they are now. Yet no one's rights are violated by this scheme. In like fashion, Nozick's derivation requires extra steps besides those Feser has specified. It must be shown that each stage of the derivation of the minimal state benefits those who undertake it. Of this necessity, Nozick was fully aware.[2]

Will anarchy lead to the minimal state, in a way that fully respects rights?

But is Nozick right? Will anarchy lead to the minimal state, in a way that fully respects rights? The derivation has been much controverted, and Feser gives a succinct and accurate account of the principal issues. One step in Nozick's account strikes me as especially questionable, although it has not occupied the center of discussion.

As everyone knows, Nozick thinks that a dominant protection agency may prohibit independents from imposing risky decision procedures on its clients. If it does so, it must compensate them, by providing these independents with its own protective services. "It may charge an independent for providing these services to him, but only an amount the independent would have had to spend anyway in protecting himself" (p. 59).

Is this not a peculiar sort of compensation? The dominant agency first cripples the ability of independents to protect themselves. It then "makes it up to them" by graciously allowing them to become its paying clients. You do not want my protection; but when I sell it to you, under conditions you will find hard to refuse, you have been "compensated." This is more than a little Orwellian.

Further, what limits the dominant agency when it prohibits "risky" decision procedures? May it ban whatever displeases it? Nozick's discussion gives us no firm limits. It is this that lies at the heart of Rothbard's criticism of his views on risk. I think that Feser has read Rothbard uncharitably, though he quotes him accurately, in attributing to him a general denial "that any behavior risky to others can ever legitimately be prohibited" (p. 62). The "risk" that concerns Rothbard in the passage Feser cites is, I think, restricted to cases where Nozickian dominant agencies act without limits. But readers must judge for themselves.

This book perfectly illustrates the old maxim, "*multum in parvo*," and to

[2] Once more, I am indebted to conversations with Nozick.

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my mind the best of the many fine things in it is Feser's brilliant defense of the view that taxation amounts to forced labor. The programs of the welfare state entail that "the state and its beneficiaries have an entitlement or enforceable claim to, and thus a partial property right in, your labor, and thus of you. They are, in short, part-owners of you. The egalitarian welfare state thus amounts to a system of slavery—less onerous than full slavery, to be sure, but partial slavery is still slavery" (p. 79). ■ **MR**

Justice and the Taliban

Just War Against Terror: The Burden of American Power in a Violent World

JEAN BETHKE ELSHTAIN
BASIC BOOKS, 2003
XI + 240 PGS.

Professor Elshtain is troubled. Many intellectuals do not realize the need for a forceful American response to world Islamic terrorism. Blinded by a reflexive anti-Americanism, they condemn the alleged failings of our society, as though social reform would suffice to end the menace of Al Qaeda. As if this were not enough, many Christian thinkers are so benighted as to associate their religion with opposition to war.

Fortunately, Elshtain, a distinguished intellectual historian and thinker in her own right, stands ready to rescue us from the spurious doubts of the intellectuals and Christian pacifists. She will enlighten us as to the true doctrine of just war; after her course of instruction, we will see that reason and morality fully support America's destruction of the Taliban regime.

I cannot think that Elshtain's grasp of history is such as to inspire confidence in her ability to teach us its lessons. I shall of course ignore her confusion of Gregory the Great with Gregory VII (p. 33); this is a trivial slip, though one wonders how she can think a pope who reigned from 590 to 604 was still alive in 1077. But what is one to think of her astonishing assertion that when Gregory deposed Henry IV, the pope "seems to have been singularly ambivalent about his authority; hence, his deposition of Henry IV was circumscribed to mean that Henry could no longer claim to be a Christian king. Ecclesiastical sanctions were removed from his exercise of power, but he was not removed from the temporal throne: Henry remained legitimate where the secular sword was concerned. Such distinctions do not exist in theocracies" (p. 33). Perhaps not; but this does not alter the fact that Gregory, at the same time that he excommunicated Henry, started the process for the election of a new emperor.

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If Elshtain understates the scope of Gregory's action, she errs in the opposite direction with Boniface VIII. She states that the pope "issued a spate of bulls on papal supremacy over the secular realm in which he asserted that the two swords [of religious and secular power] were to be wielded by one person: the bishop of Rome" (p. 33). Her assertion will not survive a glance at *Unam Sanctam* (1302), Boniface's principal statement on papal jurisdiction. He claimed that the secular sword was subject to papal supervision, not that the Church itself should wield power.

As everyone but Professor Elshtain knows, the constitutionality of the return of fugitive slaves was not at issue in Dred Scott's case.

I fear that our author is no trustworthier where American history is concerned. She informs us that Abraham Lincoln "deployed the Declaration of Independence, with its commitment to moral equality, to argue *against* the *Dred Scott* case, which, in 1857, had upheld the notorious Fugitive Slave Act" (p. 27).

As everyone but Professor Elshtain knows, the constitutionality of the return of fugitive slaves was not at issue in this case. Dred Scott was not a fugitive slave; he claimed that the fact that he had been brought into Illinois, a free state, liberated him from slavery. The Supreme Court held that Negroes could never, under the existing Constitution, be citizens: Dred Scott thus had no standing to sue in federal court. I wonder what will happen if she chances to discover that Lincoln affirmed the validity of the fugitive slave clause of the Constitution in his First Inaugural.

Perhaps, you may think, I have been unfair to the Laura Spelman Rockefeller Professor of Social and Political Ethics at the University of Chicago. Students cramming for a history final will be ill advised to use her works as a substitute for a diligent perusal of *Cliffs Notes*; but she may be a reliable guide to ethics nonetheless. Let us then turn to a direct consideration of her principal thesis.

She maintains that the destruction of the Taliban regime in Afghanistan fully met the classic criteria for just war elaborated by Aquinas and later

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thinkers. To Elshtain, the case is obvious: was the United States not acting in response to a vicious and unprovoked attack? "Surely there can be little doubt that the attacks of September 11 constituted an act of aggression aimed specifically at killing civilians. Indeed, when a wound as grievous as that of September 11 has been inflicted on a body politic, it would be the height of irresponsibility and a dereliction of duty for public officials to fail to respond" (p. 59). Clearly, then, "the U.S. military response in Afghanistan meets the just cause criterion of being a war fought with the right intention—to punish wrongdoers and prevent them from murdering civilians in the future" (p. 61).

But is not our author overlooking an obvious fact? The attacks of September 11 were carried out by the Al Qaeda organization. (I here put to one side claims that the United States lacked evidence that this was true.) But the United States' campaign did not limit itself to a strike against this organization. Quite the contrary, America aimed to overthrow the government of Afghanistan.

In response, it will no doubt be urged that the Taliban regime harbored Al Qaeda. But this does not answer our question. Why is the United States justified in doing more than directly attacking the group that assaulted it? From the fact that Al Qaeda had bases in Afghanistan, it does not follow that the Taliban forces aimed to aggress against America. Were they not largely oriented inward, aiming to establish their peculiar vision of an Islamic polity? At most, the United States would seem to be justified in measures against Taliban forces that came to the military assistance of Al Qaeda.

Readers inclined to guess Elshtain's response are in for a surprise. One might expect her to contend that harboring an aggressive force suffices to constitute adequate grounds for American intervention. She does not make this claim, nor does she deny it. She instead regales us with horror stories about the Taliban regime, particularly its brutal treatment of women.

Has she not shifted the question, in an unacceptable way? If she wants to argue that Taliban excesses justify American intervention, she is free to

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do so; I shall observe against her only that she offers a recipe for continual war. Rights violations among the nations of the world unfortunately are no rare occurrence. But the Taliban's treatment of women does not show at all that this regime has aggressed against the United States. Yet this is her purported justification for an American attack on the Afghani government, given the Al Qaeda assault.

Our author contends, with even less show of reason, that the American onslaught met the requirements of the "last resort" principle. "Properly understood, last resort is a resort to armed force taken after deliberation rather than as an immediate reaction. The criterion of last resort does *not* compel a government to try everything else in actual fact but rather to explore other options before concluding that none seems appropriate or viable in light of the nature of the threat" (p. 61).

Even if a nation goes to war in a just cause, it cannot do whatever it wishes. You cannot wipe out a city in order to rid it of a few tanks.

In this connection she notes the elusive nature of Al Qaeda. How is the United States supposed to "explore other options" when faced with so amorphous an opponent? Once more she turns a blind eye to the real issue. The attack by the United States was by no means limited to Al Qaeda members. Surely negotiations with the Taliban government could have been pursued much longer; war with the Taliban was much closer to a first resort than a final one.

As Elshtain rightly acknowledges, just war theory restricts the conduct of war. Even if a nation goes to war in a just cause, it cannot do whatever it wishes. For one thing, civilians cannot be subjected to direct attack. If they suffer casualties as the result of an attack on a legitimate target, these must be proportionate to the importance of the target. You cannot wipe out a city in order to rid it of a few tanks.

Elshtain utterly fails to show that the United States has met the proportionality requirement. She says that American forces have made every effort to avoid civilian casualties and 2,000 such deaths have occurred. These, she gives us to understand, are much less serious than the attack on the World Trade Center. American forces did not aim to kill civilians.

Yet again our author has shifted the issue. What happened to proportionality? That requirement does not vanish, if the deaths were not directly intended. Just the opposite: the issue arises only in these circumstances.

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Directly intending the death of civilians is always forbidden, regardless of the number of people involved.

Is 2,000 deaths a reasonable price to pay, considering the seriousness of the military target aimed at? Elshtain does not tell us, nor does she set forward criteria by which we might answer the question for ourselves.

I suspect she realizes that a response to our inquiry would not support American policy. As usual, she passes by the Taliban forces and concentrates on Al Qaeda: "Terrorists aim to kill as many civilians as possible. . . . How do we develop a proportionate response to a disproportionate intended threat?" (p. 69).

How can Elshtain both defend natural law and also advise us to follow Niebuhr, an opponent of that doctrine?

If her answer to her own rhetorical question is, "we can't," then she has abandoned just war theory altogether. If disproportionate attacks on civilians are immoral, they do not alter their moral status when we face an elusive foe that strikes at civilians.

Small wonder that Elshtain, after professing herself an adherent of the traditional theory, later reveals herself a follower of Reinhold Niebuhr, a theologian with altogether different views. According to that eminent figure, elevated by Henry Luce of *Time* to be America's foremost theologian, we must not let the fear of falling into evil deter us from needed military actions. To think otherwise is to fall victim to perfectionist heresy: we let evil triumph because we fear to engage the world.

Elshtain neglects to inform her readers that Niebuhr also rejected the natural law tradition that she professes to favor. For him, the notion that fixed rules bind the state's conduct of war manifested another heresy—legalism. Niebuhr sharply criticized defenders of natural law such as Jacques Maritain. These thinkers, Niebuhr held, compromised the severe demands of the Gospel. We are required to turn the other cheek: we are not given guidelines that permit the use of force.

Readers will at this point be inclined to object. Has not Niebuhr just condemned pacifists who attempt to put the Gospel teachings in practice as utopians and perfectionists? To raise this objection is to underestimate Niebuhr's ingenuity. The Gospel demands are not to be put into practice: they are "impossible possibilities" that must be kept in mind as we realize that we cannot fulfill them. Meanwhile, the state can do whatever it deems prudent, unbound by "legalistic" restrictions.

How can Elshtain both defend natural law and also advise us to follow Niebuhr, an opponent of that doctrine? She asks, in true Niebuhrian

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fashion, "Are Christians not obliged to respond [to attacks], even at the risk of dirtying their hands?" (p. 111). Someone who properly observes natural law does not "dirty his hands" or put himself at serious risk of doing so. Niebuhr, she says, "was the greatest public theologian of his time" (p. 106). One suspects that, in a conflict with Niebuhr's realism, natural law would in her view give way. Nevertheless, she finds it convenient to support both positions. Evidently she needs a remedial course in logic as well as several in history. ■ MR

The Formalism of Mises

Epistemological Problems of Economics

LUDWIG VON MISES
3RD EDITION
TRANSLATED BY GEORGE REISMAN
INTRODUCTION BY JÖRG GUIDO HÜLSMANN
LUDWIG VON MISES INSTITUTE, 2003
LXXXI + 257 PGS.

As every reader of *Human Action* knows, Ludwig von Mises devoted much attention to methodology. Many people interested in Austrian economics turn from his discussions of the *a priori* and *verstehen* in bafflement and boredom. "Enough of these philosophical abstractions," they say; "what we want is economics." No greater mistake can be imagined if one wishes to understand Mises's work.

Mises's methodological views are vital to the grasp of his concrete teaching on economic issues. Thus we are in a position to understand better than ever before, thanks to Guido Hülsmann's brilliant introduction to this welcome reissue of Mises's most extended discussion of the nature of our knowledge of economics.

The vital core of Mises's conception of economics can be seen in his confrontation with the great sociologist Max Weber. According to Weber, only some human actions count as rational. Weber contrasted "purposive-rational" action, in which an actor uses means to achieve ends, with other sorts of action, which, he claimed, do not display a means-ends structure.

Among these other sorts was what Weber termed valuational action. This is "guided by conscious belief in the unqualified *intrinsic* value of a definite mode of conduct—ethical, aesthetic, religious, or any other—purely for its own sake and independently of its consequences" (p. 88, quoting Weber).

Mises quickly identified the fallacy in Weber's claim that valuational action lacks a means-ends structure. "[I]t is quite clear that what Weber calls 'valuational' behavior cannot be fundamentally distinguished from 'rational' behavior. The results that rational conduct aims at are also values, and, as such, they are beyond rationality" (p. 90). For economics, the ends of action

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are neither rational nor irrational: rationality refers only to means.

Both "rational" and "valuational" behavior, in Weber's sense, display exactly the same means-ends structure. Contrary to Weber's view, "[I]t would be more accurate to say that there are men who place the value of duty, honor, beauty and the like so high that they set aside other goals for their sake . . . an action directed at their realization must likewise be termed rational" (p. 91). Mises argues in parallel fashion that Weber's other cases of alleged nonrational action fall into the means-ends pattern.

But why does this matter? Is not Mises's long analysis of whether all action displays his favored structure precisely a case of the useless, abstract discussions his critics dismiss as inconsequential?

Quite the contrary, Mises's discussion is essential to his entire project of economic science. Once he has shown that all action involves the use of means to achieve ends, he is in a position to develop, in a detailed way, various theorems about action, e.g., that an actor always seeks his most highly valued end.

Critics of Mises dismiss his results as formalistic. Is it not the merest tautology to say that an actor chooses what he values most highly? As Guido Hülsmann enables us to see, Mises's formalism is the key to his entire conception of economics.

To Mises, action always involves a choice among ends. One expected outcome is preferred to another; and the actor selects the means he deems best suited to achieve this goal. In a purely formal sense, the actor has maximized his expected utility; he has chosen what, at the time of his action, he most wants. But, as Hülsmann rightly stresses, there is for Mises no calculation in terms of units of utility.

Here, Hülsmann notes, Mises stood in stark opposition to many of his colleagues: "Now contrast this [view of Mises] with the perspective of those economists who think that economic calculation can be made in terms of utils [i.e., units of utility]. They too cannot get around the fact that the calculus does not in any sense determine human action. What is the significance then of marginal-utility theory, understood as a theory of calculated action? It means that this theory does not apply to just any human behavior, but only to those actions that would be observed if the acting person strictly followed the results of the utility calculus. From this point of view, therefore,

To Mises, action always involves a choice among ends. One expected outcome is preferred to another.

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economics does not deal with human action *per se*, but only with *one aspect* of human action—'rational' or 'logical' action" (p. xxvi). Hülsmann points out that both Wieser and Pareto adopted this position.

Hülsmann seems to me exactly on target here. I should like in this connection to call attention to a crucial, but little noticed, passage in *Human Action*: "The attempt has been made to attain the notion of a nonrational action by this reasoning: If *a* is preferred to *b* and *b* to *c*, logically *a* should be preferred to *c*. But if actually *c* is preferred to *a*, we are faced with a mode of acting to which we cannot ascribe consistency and rationality. This reasoning disregards the fact that two acts of an individual can never be synchronous" (*Human Action*, Scholar's Edition, p. 103). Just as Hülsmann has indicated, Mises repudiates a basic assumption used by economists who endeavor to construct a value calculus.

Economic calculation arises only with monetary prices, and these can exist only in a market economy.

But have we met the objection raised earlier? Once again, is not the question of whether economic theory governs all human action, or only a more narrowly delimited class of rational action, exactly the sort of desiccated abstraction that repels many potential readers of Mises?

Not at all. Suppose that, contrary to Mises, value calculation was possible. Then, one might attempt to determine an "efficient" scheme of production and distribution in entire independence of the market. In like fashion, the results obtained on the free market could be tested against the standards derived by value calculations. The market might be "weighed, and found wanting in the balance."

For Mises, all this is impossible. Economic calculation arises only with monetary prices, and these can exist only in a market economy. "Money . . . thus becomes an indispensable mental prerequisite of any action that undertakes to conduct relatively long-range processes of production. Without the aid of monetary calculation, bookkeeping, and the computation of profit and loss in terms of money, technology would have had to confine itself to the simplest, and therefore the least productive, methods" (p. 166).

Mises goes so far as to call this emphasis on monetary calculation "the most important discovery made by economic theory. Its practical significance can scarcely be overestimated. It alone gives us the basis for pronouncing a final judgment on all kinds of

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socialism, communism, and planned economies" (p. 166).

Thus a seemingly abstract point lies at the heart of an issue of the utmost practical importance. Can socialists escape the force of Mises's contention that calculation in values is impossible? Their only hope is to acknowledge that economic calculation requires prices

Mises did not frequently display his talent as a satirist; and I shall end with another aspect of his work that he usually kept below the surface.

but to claim that a socialist system can generate them. Elsewhere in his work, Mises readily showed the futility of these claims.[1]

He steers carefully between Scylla and Charybdis, in order to maintain his view that economics is a science that applies to all human action. Against the classical economists of the nineteenth century, who largely confined economics to actions motivated by monetary gain, Mises contended that all action, whether or not motivated by the hope of maximizing monetary income, shares a common structure. But against some of his fellow supporters of the subjective theory of value, he denied that economics studies only a delimited class of rational actions, governed by a value calculus.

Mises treats with scorn those who presumed to reject the teachings of his general science of action. Alfred Vierkandt, a once-prominent German sociologist, denied that human beings always aim to maximize their welfare, as they understand it. This view was nothing more than an individualistic fallacy. Instead, people frequently acted instinctively, in ways that subordinated their selfish concerns to the good of society.

One such "innate social propensity," Vierkandt tells us, is the instinct of subordination. Animals already manifest this tendency, as in the loyalty and obedience a dog displays for his master. Mises remarks: "we do not doubt that he [Vierkandt] has really experienced all this. Indeed, we shall go still further and not deny his qualifications to speak from direct personal experience about the 'truly human inner devotion of the dog to his master'" (p. 58).

Mises did not frequently display his talent as a satirist; and I shall end with another aspect of his work that he usually kept below the surface. Mises was a scholar of great learning, but he did not put his erudition on display. In one

[1]See especially *Human Action*, Scholar's Edition (Auburn, Ala.: Ludwig von Mises Institute, 1998), pp. 701–11.

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passing remark, though, he shows his level of knowledge: "Gresham's law—which, incidentally, was referred to by Aristophanes in the *Frogs*, and clearly enunciated by Nicolaus Oresmius (1364), and not until 1858 named after Sir Thomas Gresham by Macleod—is a special application of the general theory of price controls to monetary relations" (p. 93). ■ **MR**

The Politics of Good Fortune

Justice, Luck, and Knowledge

S.L. HURLEY
HARVARD UNIVERSITY PRESS, 2003
VIII + 341 PGS.

Susan Hurley has written a book of fundamental importance. Although she is by no means a libertarian, and uses no distinctively libertarian assumptions, she eviscerates the egalitarian theories most influential in contemporary political philosophy. Not content with her critical triumph, she advances a new approach to justice; but this fails to break sufficiently with the egalitarian theories whose customary rationale she has challenged.[1]

A line of thought present in John Rawls's *A Theory of Justice* (1971) has shaped much of the subsequent discussion of distributive justice. Rawls claimed that people do not deserve to benefit from their natural assets. Michael Jordan possesses enormously more skill at playing basketball than I do; but why should this unfortunate state of affairs enable him to earn an income somewhat higher than mine?

But why should we not profit from our talents? Why do we not deserve them? And even if, in some plausible sense, we do not deserve them, why are we not entitled to benefit from them? One way of understanding Rawls's answer is this: our natural abilities, whether good or bad, are the product of luck. We are not responsible for them and hence should neither benefit nor suffer from them.[2]

As Hurley notes, a problem arises if one reads Rawls in this way. This interpretation makes responsibility central to justice, but Rawls sometimes denies that concepts of responsibility play a central role in the theory of justice: "If you judge that no one is responsible for his natural assets, you make a negative judgment, true. But it is still a judgment about responsibility. . . . If

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[1]Robert Nozick thought very highly of Hurley's earlier book, *Natural Reasons* (1989); but, in commenting on her later work in philosophy of mind, he also noted that she tends to express herself with unnecessary complexity. This problem, I regret to say, is present in *Justice, Luck, and Knowledge*.

[2]Rawls's contention may have come from Frank Knight. See my discussion in the *Mises Review* (Fall 2000): 3–4.

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significant consequences for distributive justice flow from such negative applications, then this concept does indeed play a fundamental role in the theory of justice" (p. 135).

Later authors who have been influenced by Rawls, including G.A. Cohen, Ronald Dworkin, and John Roemer, manifest no such ambivalence. Here the aim to cancel luck assumes central importance. Hurley raises against these theories a devastating question. These authors are egalitarians: like Rawls, they reject the free market in large part because it permits large disparities of wealth to arise. But why should we assume that attempting to counter luck has anything to do with promoting equality?

At first sight, Hurley's challenge seems absurd. Let us return to the sad case of Michael Jordan and me. Suppose one grants that Jordan is not responsible for his superior athletic ability. If one's aim is to "correct for luck," is it not obvious that Jordan should have to give me a large part of his money, so long as no other people are taken into account?

Not at all, Hurley argues. We start with the premise that the existing distribution of wealth between Jordan and me arises from luck. This premise does not imply that some other distribution would manifest the influence of luck to a lesser extent. Suppose that someone divides between us the sum of Jordan's and my assets on an exactly equal basis. Why would this egalitarian distribution count as one that reduced the influence of luck?

Hurley states her point with characteristic precision: "Equalities can be just as much a matter of luck as inequalities. The fact that people are *not* responsible for a *difference* does not entail that they *are* responsible for *non-difference*. There is no more *a priori* reason to assume that equalities are not a matter of luck than there is to assume that differences are not a matter of luck; people may not be responsible for either" (pp. 151–52).

If one's aim is to "correct for luck," is it not obvious that Michael Jordan should have to give me a large part of his money?

But, one is inclined to object, is not Hurley ignoring an obvious fact about the way we speak of people as being lucky and unlucky? Surely it is Jordan, and not I, who is lucky, given the immense sums of money his talent enables him to command. Why does Hurley raise so much fuss about what is involved in correcting for luck? A redistribution from him to me takes from a lucky person and gives to an unlucky one; what is the problem?

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Our author readily acknowledges that this is a legitimate way to speak of luck. But on this conception, being lucky means having more, or much more, than others. It assumes that one starts from a position of equality and judges departures from that position to be due to luck. But then one does not have an argument that inequality results from luck: one has simply made this true by definition. Hurley concludes that the "aim to neutralize interpersonal bad luck begs the question of justification and just helps itself to the goal of equality" (p. 157).

On the author's conception, being lucky means having more, or much more, than others.

Hurley distinguishes another sense of responsibility, which she terms the counterfactual. "In the *counterfactual* reading, I compare my actual situation with other possible situations I might have been in. I have bad luck when what I have is a matter of luck and I am worse off than I might have been" (p. 156). It is this sense that underlies Hurley's claim that correcting for luck leads by itself to no egalitarian outcome.

I can here give but a sample of her subtle discussion: "It is hard enough to say whether people are responsible for what they actually have. But to neutralize luck understood counterfactually, we need to know more than this. We would have to be able to say, when people are not responsible for what they actually have, what they *would* be responsible for instead, if factors for which they are not responsible were eliminated . . . it is highly doubtful that we have any general, nonarbitrary basis for answering this further question. In many cases the answer is simply indeterminate" (p. 162).

Hurley has an approach of her own that she proposes to substitute for the version of egalitarianism she has so effectively dispatched. To my mind, she gets off to a good start. She favors a cognitive view, in which the aim is to discover the true principles of justice. She rejects conventionalism, in which the sole question about justice is the rules on which people can be expected to agree. "Cognitivism in political philosophy is not a doctrine or thesis, but a category. Cognitivist accounts are cast primarily in terms of truth and knowledge rather than choice or preference" (p. 256).

We wish, then, to attain truth about justice; how are we to proceed? As Hurley sees matters, we should try to eliminate factors that might bias our decisions. If Michael Jordan, to return to him yet again, were to deliberate on principles of justice while knowing of his superior abilities, might he not be

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tempted to select a view that would benefit people like him?

To eliminate bias, Hurley suggests, we must imagine ourselves in something like Rawls's original position. We assume, like Rawls, that we lack any information about our particular abilities or preferences. Will not the principles we choose under such conditions be as immune as we can make them from the influence of bias?

The way in which Hurley arrives at her principles of justice strikes me as more than a little surprising.

Hurley's specification of her original position follows Rawls closely at a crucial juncture. John Harsanyi and other philosophers of a utilitarian bent agree with Rawls about the imperative need to avoid bias. But, they say, why assume that people are completely ignorant about which social position they will occupy, once the veil of ignorance is lifted? Why not, instead, assume that each person has an equal chance of winding up in any position in society? On this assumption, utilitarians argue, people will choose to maximize average utility rather than conform to Rawls's ideas.

Hurley will have none of this. The utilitarian approach just sketched once more injects bias into our deliberations. "[T]he aim to neutralize also argues *against* the idea of deciding about justice on the basis of calculations of your chances of gain. But this point holds even if these calculations derive from an assumption that everyone has equal chances. Biases can distort beliefs even if they apply equally to everyone" (p. 264, emphasis removed).

The suspicion of bias, then, must at all costs be avoided; and to help secure this aim, deliberators are to be kept ignorant of key facts. Given this state of affairs, the way in which Hurley arrives at her principles of justice strikes me as more than a little surprising. It transpires that people do not want to be ignorant: they are at least moderately "averse to uncertainty." They want to know, though this preference is not absolute, what everyone will wind up getting.

People want to know what everyone will get; but, owing to the need to curtail bias, they cannot know particular facts about themselves. How are these imperatives, seemingly in conflict, to be reconciled? In essence, Hurley maintains that people will favor equal distribution of the "basic goods" needed to flourish. Under equal distribution, people will not be left in the dark as to what they will get. By contrast, in a system where "you get what you earn," people will not know how they will fare, since by hypothesis they

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do not know their places in society. Hence people will prefer equality to a meritocratic rule of distribution. Since their aversion to uncertainty is not absolute, though, they will allow inequalities that increase the total stock of goods, "so long as the level of the worst off is kept as high as possible" (p. 272). We arrive at something like Rawls's difference principle. This outstanding critic of egalitarian theories has, at least to her own satisfaction, vindicated a strongly egalitarian view.

I cannot think that Hurley's ingenious labors have resulted in an acceptable account of justice. She seems to me correct that many people are moderately averse to uncertainty. But this is, for all she has shown, a mere preference; she has not argued that people ought, in an objective sense, to shun uncertainty.

What then has happened to her cognitive program? Hurley has given us no reason to think that her theory of justice is true. Rather, she introduces certain conditions designed to make the search for truth as unbiased as possible and proceeds to abandon the quest altogether. Why should one think that what people will prefer under the condition of aversion to certainty will give us truth?

Hurley's entire approach strikes me as misguided. If we wish to find out the truth about justice, why not proceed as we do with any other philosophical problem, i.e., adduce relevant arguments? When, in a part of her book I have had here to neglect, Hurley discusses issues of responsibility, she follows just this course. She considers various arguments that philosophers have raised about the topic, and arrives at her own conclusions. She does not endeavor to set up special conditions under which analysis of responsibility can take place in an unbiased fashion. Why not then in like fashion reason directly about justice?

Hurley deserves great credit for her outstanding critical account of egalitarian theories that aim to counteract luck. Murray Rothbard grasped her key insight many years ago. In *Power and Market*, published in 1970, he writes: "[T]here is no justification for saying that the rich are luckier than the poor. It might very well be that many or most of the rich have been *unlucky* and are getting less than their true DMVP [discounted marginal value product], while most of the poor have been *lucky* and are getting more. No one can say what the distribution of luck is; hence there is no justification here for a 'redistribution' policy" (pp. 234–35). ■ **MR**

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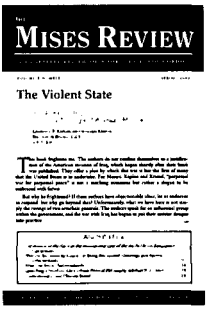

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The Trouble With Democracy

The Case Against the Democratic State: An Essay in Cultural Criticism

GORDON GRAHAM
IMPRINT ACADEMIC, 2002
96 PGS.

Gordon Graham challenges practically the whole of reigning orthodoxy in political philosophy in his remarkable book. To the *bien pensants* of political theory, "political participation" and "democratic decision-making" are all the rage, and theorists such as Amy Gutmann, Benjamin Barber, and Ronald Dahl constantly urge us on to more and more democracy. Like Hans-Hermann Hoppe in his excellent *Democracy—The God that Failed*, though with rather different arguments, Graham sets himself in firm opposition to this dominant trend.[1] Graham is principally a philosopher of religion, and he brings to political theory the fresh perspective of an outsider.

[1]See my review of Professor Hoppe's book, in the *Mises Review* (Spring 2002): 1–6.

Like Hoppe, our author goes further than to put democracy into question. He manifests a bold and welcome skepticism toward the state itself. Graham here labors under a handicap, as he in effect fights with one hand tied behind his back. He appears unaware of private property anarchism. When he asks, why do we need the state, he does not bring to bear how private protection agencies might fulfill the functions that today the state monopolizes.

Graham here labors under a handicap, as he in effect fights with one hand tied behind his back.

In spite of laboring under this limitation, he strikes crippling blows at the usual rationale for the state.

Those ensnared by the conventional wisdom will likely throw up their hands in despair. "Of course we need the state," they will say. "Without it, will not society at once collapse into chaos? Crime will be uncontrollable,

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and we will find ourselves in a Hobbesian war of all against all."

Will we? Graham raises two points that, taken together, throw into question this familiar view. For one thing, most people refrain from crime because they think it wrong. Unless most people avoided aggression on their own volition, not even the most powerful state could restrain them. "It simply is not plausible (because it is not feasible) to suppose that police, even in considerable numbers, could enforce the sort of order that is required for a large and busy supermarket to function effectively, never mind the thousands upon thousands of these that many modern societies support. We know very well that when rioting does break out, it can be difficult for well armed and trained police in sizeable numbers to control a mob in even one small locality" (p. 11).

Crime exists: the state does not fully give us the social order it promises.

If the state is not necessary for social order, neither is it sufficient. Graham reminds us of an obvious fact, often overlooked when we take for granted the need for the state. Crime exists: the state does not fully give us the social order it promises. "Theft of property, fraudulent transactions, kidnapping, violence against the person and so on, all occur in societies with a strong and efficient State" (p. 12).

The choice between the state and anarchy, then, is not a decision between order and chaos. Order does not depend on the state, and it does not prevent all disorder. But Graham does not conclude from these considerations that the state should be abolished. The argument from "public goods" impresses him; when individual and collective rationality diverge, must not the state step in to bring them into alignment? (Unfortunately, Graham is evidently unaware of work by Bruce Benson and others on the private provision of public goods.) And he thinks that stateless societies could not mount effective resistance to attacks from foreign states.

The state, then, can be useful, our author thinks. But it is dangerous, as the totalitarian nightmares of the twentieth century have taught us. How can we obtain the advantages of the state while avoiding its dangers? Some have sought an answer in democracy. If the people rule, we have little to fear, and much to gain, from a well run state. It is this thesis that Graham sets as his principal task to refute.

Our author begins by recalling the arguments of the greatest of all opponents of democracy, Plato. In the *Republic*, Plato famously argues that,

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"[j]ust as it would be madness to settle on medical treatment for the body of a person by taking an opinion poll of the neighbors, so it is irrational to prescribe for the body politic by polling the opinions of the people at large" (p. 23).

To this the reply is obvious. Given a certain goal, such as health, we can appropriately turn to experts. But in politics, just what are "up for grabs" are the ends that society should pursue. Here there are no experts; and there is nothing at all incongruous about appealing to the majority in this context. Indeed, is not the alternative to majority rule outright dictatorship?

But Plato is not so easily turned aside. Democratic elections often settle questions that have to do with means. When voters endorse minimum wage laws, inflation, and environmental controls on business, are they not dealing with issues that fall within the competence of the economist? They think these measures will promote prosperity: they presumably do not support them as valuable for their own sake. Why then is it up to them, rather than qualified experts, to decide on these issues?

Further, why should we accept the contention that there are no experts about ends? To say this is to beg the question against Plato. He maintained, and many of his successors agreed with him, that ethics is an objective inquiry. If he is right, why should we be governed by the untutored whims of the populace? "In any democracy, there will always be people who cannot leave aside purely personal preference and interest when they enter the realm of public debate. Are they to be ranked alongside those who genuinely try to think about what would be best for the community as a whole?" (p. 28).

Graham supplements his resort to Plato with the claim that support for democracy leads to a paradox. Suppose you endorse democracy: you think, e.g., that the majority of voters should decide whether we have minimum wage laws. At the same time, you yourself think that such laws are objectively bad. What happens if minimum wage laws win majority support? You are caught in a trap. You must think we ought to have such laws, since you think that the majority should rule and the majority has voted for them. At the same time, you must think that we ought not to have them, since you believe that they are objectively bad.

Plato maintained that ethics is an objective inquiry. If he is right, why should we be governed by the untutored whims of the populace?

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I cannot think that this alleged paradox generates a real difficulty. Here, we have reasons to accept two conflicting conclusions. One reason tells us that we ought to have minimum wage laws, another that we should not. Must we not then decide, in the given case, which consideration is the stronger? A clash between various *prima facie* oughts, to use the term of Sir David Ross, is nothing to be feared.

What has free discussion to do with majority rule? A majority-rule system can suppress free speech, and an elite regime not dependent on majority support can permit it.

Let us return to the Platonist arguments. Faced with these, a democrat might I think reply in this way: "A democracy might very well institute policies that, objectively speaking, are bad. If I deem the policies of my society bad, at least I have the possibility of trying to change them; my vote counts. The alternative is dictatorship; is this what the critic of democracy wants?"

Graham meets this argument head on. In a modern democracy, your vote does not count. Because of the large number of voters in an election, an individual has not the remotest chance of turning the results in the direction he favors. "Imagine an election in a parliamentary constituency of 10,000 voters where 60 percent go to the polls and the outright winner (X) gets 52 percent of the vote. Suppose I voted for X. It is evident that my vote makes no difference. Had I not done so, she would have won anyway; 32,000 minus one still wins. Had I voted against her, this would make no difference either. . . . But if this is true of my vote, it is true of everyone else's also. So it does not matter how anyone would have voted, the outcome would have been the same" (p. 58, emphasis omitted).

A supporter of democracy is unlikely at this point to retire from the battle defeated. "No individual vote counts for much," he will acknowledge, "but in a democracy people are free to persuade others to adopt their policies. It is the process of free discussion, not voting by itself, that lies at the essence of democracy."

Our author is well prepared for this counter. What has free discussion to do with majority rule? A majority-rule system can suppress free speech, and an elite regime not dependent on majority support can permit it. "Why should the subjects of a good despot or liberal oligarchy not arrange public debates on political issues, publish newspapers, make television programmes, and even organize conferences and

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rallies designed to bring influence to bear on the decision makers?" (p. 53).

"Possibly an oligarchy might act in this fashion," a democrat will reply, "but discussion will not be widespread. In a democracy, people endeavor to influence the voters, the ultimate decision makers. In an oligarchy, discussion and debate lack a practical purpose. Why would people waste much energy on public discussion when their efforts may count for naught?"

Graham once more has a response. Why should one believe that persuasion can work only in a democracy? Why are "the good despot and the liberal oligarchs" (p. 55) immune to persuasion? "The democrat . . . would be very unwise to play down the significance of voicing opinions, since this is the only way, between elections, that democracy is to be distinguished from elective dictatorship" (p. 55).

In sum, although Graham does not reject the state, he thinks the usual arguments for it of little merit. The alleged advantages of the state must be weighed against its manifest disadvantages, most notably its tendency to assume undue power. Democracy provides no safeguard against this danger, and in a democratic system individual voters are powerless. Further, democracy subordinates the pursuit of truth to government by the whim of the incompetent and untrained. Free discussion is no doubt a good, but such discussion has no necessary connection with democratic rule. Graham's courage and insight in challenging prevailing dogma deserve great praise.

Blood for Unity

Why We Fight: Moral Clarity and the War on Terrorism

WILLIAM J. BENNETT
HENRY REGNERY, 2003
197 PGS.

William Bennett has updated the paperback edition of his book with two new chapters, one of which demands that Saddam Hussein and all his works be eradicated. But he has not availed himself of the chance to correct the misleading title of his book. The present title suggests that Mr. Bennett himself is among the fighters, but this is obviously not the case. A more accurate title is *Why Others Should Fight to Fulfill My Vision of the World.*

As Bennett sees matters, the United States must be able to recognize evil for what it is. Once we Americans see evil in the world we must act against it: only we have the power to do so. The Taliban regime in Afghanistan banned music; this was evil and justified us in overthrowing it. I do not exaggerate. Bennett states: "When Kabul was liberated in mid-November [2001] . . . everywhere, everywhere, there was singing and the sound of music. . . . The music was playing, and people were dreaming their dreams again. That is why we fight" (p. 177).

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But does not the doctrine of just war limit us in our crusade against evil? Not at all, our author replies. Just war theory teaches us to fight in order to avert future evil. There is the little matter of the criterion of last resort, which requires us to seek a peaceful resolution of a dispute before using force, but this does not faze Bennett. He omits to mention it altogether.

Relativists and other anti-Americans attempt to subvert our judgments of good and evil, but fortunately Bennett, a trained philosopher, is here to help us make discriminating judgments. Here is an example. Saddam Hussein's "monstrous tyranny has been surpassed by only a few other dictators, all of them rightly reviled in the judgment of history. Saddam Hussein invaded Iran, invaded Kuwait, attempted to assassinate a former U.S. president . . . murdered thousands of his own people, and refused to abide by international law" (p. 193). A deplorable list of misdeeds, no doubt; but one would have thought that they do not suffice to make Saddam more than a despot of a quite ordinary sort.

But I must be careful. Critics of Bennett's rather unsubtle judgments risk verbal assault themselves. He deems Stanley Fish a relativist. As such, he holds the same position as the murderer Charles Manson. Bennett quotes a remark by Manson and says: "Stanley Fish himself could hardly have put it better" (p. 69). All Fish said, in the passage that arouses Bennett's ire, is that we cannot detach ourselves from our own judgments of good and evil. Fish maintained "that we should abandon any 'hope of justifying our response to the attacks in universal terms that would be persuasive to everyone, including our enemies'" (p. 66, quoting Fish). I take this to be a rejection of relativism. Fish claims that we should adhere to the moral views we have, not, as a relativist would, that we should regard our own views as but one of many equally valid positions. Fish rejects neutrality, not truth. But, even if I am wrong, is it not strange to think that Fish's view puts him on the same level doctrinally as a notorious killer?

We must, if Bennett is right, strike against evil when we find it. A problem

Fortunately Bennett, a trained philosopher, is here to help us make discriminating judgments.

arises, if we wish to follow his path. How are we to identify evil, if Bennett has not spoken to the situation we confront? And even if he has, how can we see for ourselves the basis of his judgments, without having to depend on his authority?

This font of kindness stands ready to help. We must not be guided by dispassionate reason: we must rather rely on our feelings of anger. "But why must we accept the premise that anger is itself a suspect quality and always in need of 'management'? To

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the contrary, as the ancients recognized, anger is a necessary power of the soul, intimately connected with the passion for justice" (p. 41). I do not doubt that there is a place for righteous anger; but I had not heard that it ought to control foreign policy. But I must not proceed further with this thought, lest I expose myself as a Mansonite.

Not content with what he has already done for us, Bennett helps us to identify the target of our future wrath. It is the Islamic group of nations, if they fail to clean up their act posthaste. Bennett has read Bernard Lewis, so he

I do not doubt that there is a place for righteous anger; but I had not heard that it ought to control foreign policy.

is in a position to tell us that the doctrines professed by Al Qaeda are not a radical aberration from mainstream Islam. "This brings us back to the question of whether the brand of radical Islam represented by Osama bin Laden was indeed an artificial growth that 'hijacked' the classical faith. What I have been trying to suggest is that the growth is not artificial, and that the classical faith is not without its deeply problematic aspects, particularly when it comes to relations with non-Muslims" (p. 95). I do not presume to quarrel with someone as righteously angry as Bennett, particularly so when he has read Bernard Lewis; but I do not recall any Muslim country attacking the United States in recent centuries.

Why is Bennett so anxious to involve America in so extensive a struggle against evil? Any answer must be speculative, but I suspect that he seeks a sense of national unity based on hatred of an enemy. He speaks of the mood in America after September 11 as if it were a religious experience: "In the wake of September 11, the doubts and questions that had only recently plagued Americans about their nation seemed to fade into insignificance. Good was distinguished from evil, truth from falsehood. We were firm, dedicated, united" (p. 10).

In one place, to my surprise, Bennett praises the "open-ended search for the truth" of Peter Abelard (p. 178). Though he rightly ranks the dialectical method of the medieval scholastics as one of the glories of the West, he does not want critical thinking to extend to foreign policy. Here, with D.H. Lawrence, we are to "think with the blood." Those who question our feelings of national unity, founded on moral indignation, are themselves enemies to be vilified.

It would be easy to laugh at Bennett's verbal extravagance, but his strident calls for war seem to have borne fruit. He said, several months before the American invasion, that a "decision not to act against Saddam Hussein would go down as one of the most dishonorable acts of appeasement and nonfeasance in history" (p. 196). He need not have worried. ■ MR

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